

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV - 4071

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THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND,  
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS  
APPRENTICESHIP, JOURNEYMAN RETRAINING,  
EDUCATIONAL AND INDUSTRY FUND, NEW YORK  
CITY DISTRICT COUNCIL OF CARPENTERS CHARITY  
FUND, and THE NEW YORK CITY AND VICINITY  
CARPENTERS LABOR MANAGEMENT COOPERATION  
FUND, by MICHAEL J. FORDE, and PAUL O'BRIEN,  
as TRUSTEES,

Judge Berman

07 CV \_\_\_\_\_

**SUMMONS**

Plaintiffs,

-against-

DTRT CONSTRUCTION, INC.,

Defendant.

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TO:

DTRT Construction, Inc.  
75 Essex Street, Suite 200  
Hackensack, NJ 07601

**YOU ARE HEREBY SUMMONED** and required to file with the clerk of this court and serve upon

O'DWYER & BERNSTIEN, LLP  
52 Duane Street  
New York, New York 10007  
(212) 571-7100

an answer to the complaint which is herewith served upon you, within **30 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**J. MICHAEL McMAHON**

CLERK

BY DEPUTY CLERK

DATE

MAY 24 2007

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RETRAINING, EDUCATIONAL AND INDUSTRY  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS CHARITY FUND, and THE NEW YORK  
CITY AND VICINITY CARPENTERS LABOR  
MANAGEMENT COOPERATION FUND,  
by MICHAEL J. FORDE, and PAUL O'BRIEN,  
as TRUSTEES,

Judge Berman

07 CV \_\_\_\_\_

**COMPLAINT**

MAY 24 2007

Plaintiffs,

-against-

DTRT CONSTRUCTION, INC.,

Defendant.

-----X

Plaintiffs ("Benefit Funds"), by their attorneys O'Dwyer & Bernstein, LLP, for their  
Complaint allege as follows:

**NATURE OF THE CASE**

1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement ("Agreement") between The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and DTRT Construction, Inc. ("Employer").

**JURISDICTION**

2. This Court has jurisdiction over this proceeding pursuant to section 301 of the

Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

### VENUE

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

### PARTIES

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant DTRT Construction, Inc. is a foreign corporation incorporated under laws of the State of New Jersey with a principal place of business located at 75 Essex Street, Suite 200, Hackensack, NJ 07601.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29

U.S.C. §1002 (5).

**FIRST CLAIM FOR RELIEF**

9. Defendant, DTRT Construction, Inc., was bound at all relevant times by a collective bargaining agreement with the Union, which, by its terms, became effective July 1, 2001. Said Agreement provides, inter alia, that the defendant shall furnish its books and payroll records when requested by the Benefit Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with the Benefit Funds' demands to furnish its books and records for the purpose of conducting an audit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Robert Herzog, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing and rendered his award, in writing, dated April 2, 2007 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The arbitrator found that DTRT Construction, Inc. had failed to comply with the Agreement as it relates to paying fringe benefit monies and directed it to furnish the Plaintiffs with any and all books and records, for the period of January 6, 2004 through April 2, 2007 including but not limited to, the cash disbursement section of the cash book, general ledger, job location records, daily time records and all certified payrolls.

14. The arbitrator also found that DTRT Construction, Inc. was required to pay the

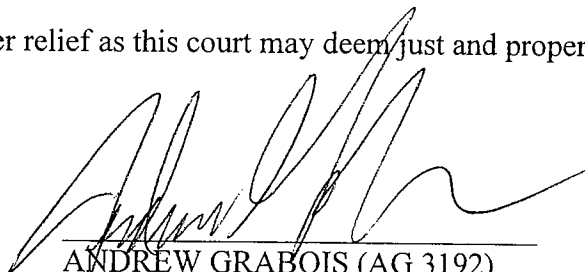
funds a sum of \$2,350.00 pursuant to the Agreement, representing costs incurred in the arbitration.

15. The defendant, DTRT Construction, Inc. has failed to abide by the award.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

1. For an order confirming the arbitration award in all respects;
2. For entry of judgment in favor of the Plaintiffs ordering DTRT Construction, Inc. and its officers to make available to the Plaintiffs or authorized representatives any and all books and records deemed necessary to conduct an audit including, but not limited to, the cash disbursement section of the cash book, general ledger, job location records, daily time records and all certified payrolls for the period January 6, 2004 through April 2, 2007.
3. For entry of judgment in favor of the Benefit Funds and against DTRT Construction, Inc. ordering DTRT Construction, Inc. to pay the Benefit Funds a total sum of \$2,350.00 pursuant to the arbitrator's award.
4. For attorneys' fees and costs of this action;
5. For such other and further relief as this court may deem just and proper.

Dated: New York, New York  
May 24, 2007



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ANDREW GRABOIS (AG 3192)  
O'Dwyer & Bernstein, LLP  
Attorneys for Plaintiffs  
52 Duane Street  
New York, NY 10007  
(212) 571-7100